

MONTANA LEGISLATIVE HISTORY

Chapter 204 19 1983

Bill H \_\_\_\_\_ S 409

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 3/10 \_\_\_\_\_ c

\_\_\_\_\_ c

\_\_\_\_\_ c

\_\_\_\_\_ c

Date Out \_\_\_\_\_ c

S. Committee on Judiciary

Hearing Date(s) 2/17 \_\_\_\_\_ c

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\_\_\_\_\_ c

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Did this bill originate in an interim committee? \_\_\_\_\_ Yes \_\_\_\_\_ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

INTRODUCED: 02/12/83

REFERRED TO COMMITTEE ON NATURAL RESOURCES: 02/12/83

HEARING: 2/18/83

ON MOTION, 2/19/83, THAT THE BILL BE PRINTED AND PLACED ON 2ND READING. MOTION

PASSED BY THE FOLLOWING VOTE: AYES: 24; NAYS: 22.

2ND READING: 02/21/83 AYES: 35; NAYS: 14

3RD READING: 02/23/83 AYES: 30; NAYS: 19

TRANSMITTED TO HOUSE: 02/23/83

REFERRED TO COMMITTEE ON NATURAL RESOURCES: 02/28/83

HEARING: 3/14/83

REPORT: 03/15/83, BE NOT CONCURRED IN

KILLED IN COMMITTEE: 3/17/83

SB 407 -- GAGE, ROUSH, KENNERLY -- ALLOWING A CREDIT ON THE COAL SEVERANCE TAX, THE OIL AND GAS SEVERANCE TAX, THE MINING LICENSE TAXES, AND THE RESOURCE INDEMNITY TRUST TAX FOR SIMILAR TAXES PAID TO TRIBAL GOVERNMENTS; AND PROVIDING AN APPLICABILITY DATE.

INTRODUCED: 02/12/83

REFERRED TO COMMITTEE ON TAXATION: 02/12/83

HEARING: 2/18/83

DIED IN COMMITTEE

SB 408 -- HAMMOND, DEVLIN, SCHYE -- PROVIDING A LICENSE IN LIEU OF TAX FOR CERTAIN AIRCRAFT; ... AND PROVIDING AN APPLICABILITY DATE.

INTRODUCED: 02/14/83

REFERRED TO COMMITTEE ON TAXATION: 02/14/83

HEARING: 3/1/83

REPORT: 3/1/83, DO PASS

2ND READING: 03/04/83, DO PASS AYES: 2; NAYS: 45. FAILED.

2ND READING: 3/4/83 BE INDEFINITELY POSTPONED AYES: 31; NAYS: 14

BILL KILLED

SB 409 -- BERG, HALLIGAN, TURNAGE, ET AL. -- CLARIFYING THE LAW REGARDING THE REVOCATION OF A DEFERRED OR SUSPENDED SENTENCE; ... AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BY REQUEST OF: THE DEPARTMENT OF JUSTICE

INTRODUCED: 02/14/83

REFERRED TO COMMITTEE ON JUDICIARY: 02/14/83

HEARING: 2/17/83

REPORT: 02/18/83, DO PASS, AS AMENDED

2ND READING: 02/21/83 AYES: 50; NAYS: 0

3RD READING: 02/23/83 AYES: 49; NAYS: 0

TRANSMITTED TO HOUSE: 02/23/83

REFERRED TO COMMITTEE ON JUDICIARY: 02/28/83

HEARING: 3/10/83

REPORT: 03/10/83, BE CONCURRED IN

2ND READING: 03/11/83, BE CONCURRED IN AYES: 97; NAYS: 0

3RD READING: 03/14/83, BE CONCURRED IN AYES: 98; NAYS: 0

RETURNED TO SENATE: 3/14/83

TRANSMITTED TO GOVERNOR: 03/21/83

SIGNED: 3/24/83, CHAPTER 204

SENATE BILL NO. 409

INTRODUCED BY BERG, HALLIGAN, TURNAGE,  
CRIPPEN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE SENATE

|                   |                                                                 |
|-------------------|-----------------------------------------------------------------|
| February 14, 1983 | Introduced and referred to Committee on Judiciary.              |
| February 18, 1983 | Committee recommend bill do pass as amended. Report adopted.    |
| February 19, 1983 | Bill printed and placed on members' desks.                      |
| February 21, 1983 | Second reading, do pass.                                        |
| February 22, 1983 | Correctly engrossed.                                            |
| February 23, 1983 | Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House. |

IN THE HOUSE

|                   |                                                           |
|-------------------|-----------------------------------------------------------|
| February 28, 1983 | Introduced and referred to Committee on Judiciary.        |
| March 10, 1983    | Committee recommend bill be concurred in. Report adopted. |
| March 11, 1983    | Second reading, concurred in.                             |
| March 14, 1983    | Third reading, concurred in.                              |

IN THE SENATE

|                |                                        |
|----------------|----------------------------------------|
| March 15, 1983 | Returned to Senate. Sent to enrolling. |
|                | Reported correctly enrolled.           |

1 ~~Asa~~ BILL NO. 409  
 2 INTRODUCED BY Berg Jolly Turner Casper  
 3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT A  
 6 PETITION TO REVOKE A DEFERRED OR SUSPENDED SENTENCE BE FILED  
 7 DURING THE PERIOD OF DEFERRAL OR SUSPENSION; CONTINUING  
 8 JURISDICTION TO REVOKE IF THE PERIOD OF DEFERRAL OR  
 9 SUSPENSION EXPIRES AFTER THE PETITION IS FILED; AMENDING  
 10 SECTION 46-18-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
 11 DATE AND AN APPLICABILITY DATE."  
 12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 46-18-203, MCA, is amended to read:

15 "46-18-203. Revocation of suspended or deferred  
 16 sentence. (1) A judge, magistrate, or justice of the peace  
 17 who has suspended the execution of a sentence or deferred  
 18 the imposition of a sentence of imprisonment under 46-18-201  
 19 or his successor is authorized ~~during the period of the~~  
 20 ~~suspended sentence or deferred imposition of sentence~~ in  
 21 his discretion to revoke the suspension or impose sentence  
 22 and order the person committed. He may also, in his  
 23 discretion, order the prisoner placed under the jurisdiction  
 24 of the department of institutions as provided by law or  
 25 retain such jurisdiction with his court.

1 (2) ~~A petition seeking revocation of a suspended~~  
 2 ~~sentence or imposition of a sentence previously deferred~~  
 3 ~~must be filed with the sentencing court during the period of~~  
 4 ~~suspension or deferral. Expiration of the period of~~  
 5 ~~suspension or deferral after the petition is filed does not~~  
 6 ~~deprive the court of jurisdiction to rule on the petition.~~

7 (3) Prior to the revocation of an order suspending or  
 8 deferring the imposition of sentence, the person affected  
 9 shall be given a hearing."

10 ~~NEW SECTION.~~ Section 2. Applicability date. Section 1  
 11 applies to any petition filed after the effective date of  
 12 this act.

13 ~~NEW SECTION.~~ Section 3. Effective date. This act is  
 14 effective on passage and approval.

-End-

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
February 17, 1983

The thirtieth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on February 17, 1983 at 10:07 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 170: SB170 was re-referred from State Administration. It was initially introduced to repeal sections 70-30-321 and 70-30-322, but the State Administration Committee found the need to include additional sections which specify that if an eminent domain situation existed the property would revert. Senator Marbut explained the intent of the 1981 legislature when adopting these laws. Senator Towe reviewed two possible legal theories to explain the interest taken by eminent domain: (1) you take a fee simple interest, or (2) you don't get a fee simple interest. He advised that SB170 in its amended form attempts to clear up the situation in which the state attempts to retain property even though it is no longer used for a highway. In this situation, the bill will give the landowner his property back. The last two sections of the amended version of SB170 will not interfere with sections 1 and 2. Sections 1 and 2 show what the legislature intended in 1981. Section 4 assures that the landowner will get his land back if eminent domain procedure is used.

OPPONENTS: Mike Zimmerman, representing the Montana Power Company, supported the bill in its introduced form as a repealer, but opposed the amended form. He stated that it now intends to unfairly take the condemnee's property interest (see witness statement Exhibit "A").

PROPONENTS: John Holter, representing the Montana Farm Bureau Federation, strongly supported the bill and recommended that the Committee give it a do pass recommendation (see witness statement Exhibit "B").

There being no further proponents or opponents, the hearing was opened to questions from the Committee.

The Committee discussed the addition of the new sections and did not feel there had been a violation of the constitutional prohibition against changing the purpose of a bill, as the amended bill appeared to do what the introduced bill intended. Senator Marbut advised that the Montana courts are holding decisions for this legislation. Senator Towe stated that the amendments merely clarify the law and make technical corrections to accomplish what was intended by the 1981 legislature. Chairman Turnage

was concerned with the constitutionality that no property shall be taken without just compensation but advised this would be discussed at a later time.

There being no further discussion, the hearing was closed.

CONSIDERATION OF SENATE BILL 393: Senator Daniels advised that his witness was still not available and requested that the hearing be deferred until February 18. The Committee acknowledged this request.

CONSIDERATION OF SENATE BILL 409: Senator Berg advised that he was sponsoring this bill at the request of the Department of Justice and introduced Margaret Johnson who would present the bill.

PROPOSERS: Margaret Johnson, an Assistant Attorney General, advised that SB409 will amend Section 46-18-203 by removing the phrase "during the period of the suspended sentence or deferred imposition of sentence." It will also add a new subsection which will permit the court to retain jurisdiction even after the suspended or deferred imposition has run, if a petition is filed within the period of the suspension or deferral. This bill will clarify the law in regards to requiring a petition. (See written testimony Exhibit "C") A proposed amendment was also distributed which would amend the title to reflect the changes in the bill.

There being no further proponents, no opponents, and no questions from the Committee, the hearing was closed and moved into executive session.

ACTION ON SENATE BILL 409: Senator Galt moved to adopt the amendments as proposed. This motion passed unanimously. Senator Mazurek moved SB409 DO PASS AS AMENDED. This motion also passed unanimously.

CONSIDERATION OF SENATE BILL 433: Senator Brown, sponsor of this bill, advised that it revises the laws concerning property exempt from execution. Professor McDonald at the Law School felt there was a need to update these laws and therefore has rewritten this section of the Code. Because of the short notice given for the hearing, Professor McDonald was unable to be present to testify. Therefore, Senator Brown requested that the hearing be deferred until February 18. The Committee acknowledged this request.

The Chairman announced that the Committee was ready to consider executive action on several bills previously heard.

TESTIMONY OF MARGARET M. JOYCE JOHNSON

ASSISTANT ATTORNEY GENERAL

REGARDING SENATE BILL 409

Section 46-18-203 of the Montana Code Annotated in its present form permits a judge to revoke a suspended or deferred sentence "during the period of the suspended sentence or deferred imposition of sentence." That phrase was interpreted by the Montana Supreme Court in the 1981 case of FELIX v. MOHLER, 636 P.2d 830 (copy attached). The Court held that the filing of a petition to revoke the sentence during the period of the suspension or deferral was insufficient to vest the sentencing court with jurisdiction to revoke if the court was unable to act and hold a hearing before the sentence had run. Although that interpretation of the statute certainly accords with the literal wording of the statute, brief analysis shows that that could not have been the intent of the legislature in enacting that provision. Such an interpretation effectively gives probationers serving a suspended sentence or for whom imposition of sentence was deferred, a carte blanche to violate the conditions of their probation at any time during the final days of their probation because the court will be unable to hold a hearing on the petition

"C" 2-17-83

even if a petition to revoke is filed during the period of suspension or deferral.

To rectify that situation, the Department of Justice has requested that Senate Bill 409 be introduced to amend Section 46-18-203 and remove from the statute the phrase "during the period of the suspended sentence or deferred imposition of sentence" which the Court interpreted in *FELIX v. MOHLER*. The bill also adds a new subsection (2) to the statute specifically permitting a sentencing court to act upon a petition to revoke either a suspended sentence or a deferred imposition of sentence even after the period of suspension or deferral has run as long as the petition is filed within the period of suspension or deferral.

The proposed amendment is made applicable to all petitions filed after the effective date of the act and the act is made effective upon passage and approval by the Governor. As originally proposed, the title to this bill began, "AN ACT TO CLARIFY THE LAW REGARDING THE REVOCATION OF A DEFERRED OR SUSPENDED SENTENCE . . . etc." We would propose that the title again be amended to reflect that this bill is intended to clarify what has always been the only reasonable intent of the legislature regarding revocation of a deferred or suspended sentence, i. e. (1) that anytime a probationer



"C"  
2-17-83

violates the conditions of his probation during the period of deferral or suspension, he is subject to having that sentence revoked, whether or not the court in question is able to hold a hearing on the petition to revoke during the period of suspension or probation and (2) that a probationer cannot with impunity violate the conditions of his probation in its final days simply because the sentencing court's calendar and the requirements of due process do not permit the holding of a hearing on the petition during the remaining days of the period of suspension or deferral or suspension. Failure to comply with the conditions of probation and prompt action by the State in petitioning the sentencing court to revoke the suspension or deferred imposition of sentence should suffice to permit the sentencing court to act on the merits of that petition and revoke the sentence if the claimed violations of probation are found to have occurred.

Aaron FELIX, Petitioner,

v.

Mel MOHLER, Director, Swan River  
Youth Forest Camp, for the State  
of Montana, Respondent.

No. 81-340.

Supreme Court of Montana.

Submitted on Briefs Oct. 22, 1981.

Decided Nov. 12, 1981.

Habeas corpus proceeding was brought to secure release of petitioner from restraint under district court order revoking a three-year deferred sentence and imposing a three and one-half-year sentence. The Supreme Court, Morrison, J., held that statute governing revocation of suspended or deferred sentence grants jurisdiction to courts to revoke suspended or deferred sentences only during the period of such sentences.

Writ granted.

1. Criminal Law  $\Rightarrow$  982.9(2)

Action by judge, magistrate, or justice of the peace to revoke suspended or deferred sentence outside the provisions of statute governing revocation of suspended or deferred sentence is without jurisdiction. MCA 46-18-203.

2. Statutes  $\Rightarrow$  190

If statute is plain, unambiguous, direct and certain, statute speaks for itself and there is nothing left for court to construe.

3. Criminal Law  $\Rightarrow$  982.9(2)

Statute governing revocation of suspended or deferred sentence grants jurisdiction to judges, magistrates, or justices of the peace to revoke suspended sentences or impose sentences following deferred sentences only during period of suspended or deferred sentences, regardless of whether petition for revocation has been filed prior to termination of such sentence. MCA 46-18-203.

Patterson, Marsillo, Tornabene & Schuyler, Missoula, for petitioner.

Mike Greely, Atty. Gen., Helena, Edward P. McLean, Deputy County Atty., Missoula, for respondent.

100-1183  
MORRISON, Justice.

Petitioner, Aaron Felix, applies for a writ of habeas corpus stemming from an order of the Fourth Judicial District Court entered on May 27, 1981. This order revoked a three year deferred sentence given petitioner on May 22, 1978 and imposed a three and one-half year sentence at the Montana State Prison upon petitioner.

Petitioner was convicted of theft, a felony, in the District Court of the Fourth Judicial District, Missoula County. On May 22, 1978, he was given a three year deferred imposition of sentence on the condition that restitution be made.

On August 20, 1979, this deferred sentence was continued and petitioner was ordered to complete restitution by November 5, 1980. Petitioner failed to comply with this order by November 5, 1980, and a petition to revoke petitioner's deferred sentence was filed on January 16, 1981. A hearing on this petition was held May 27, 1981, three years and five days after the initial deferral.

At this hearing, petitioner moved to dismiss the proceeding on the grounds that the District Court was without jurisdiction. The District Court overruled petitioner's objection concluding that the Court retains "... jurisdiction (when) the petition is filed within the (deferral) time."

The District Court sentenced petitioner to three and one-half years in the Montana State Prison. Petitioner has been incarcerated since, either at the Montana State Prison or the Swan River Youth Forest Camp.

Petitioner raises the following issue:

1) Whether a District Court retains jurisdiction to revoke a deferred imposition of sentence beyond the time period of deferral if a petition to revoke is timely filed?

In *State v. Porter* (1964), 143 Mont. 528, 540, 541, 391 P.2d 704, 711, this Court stated that:

"[t]his state is committed to the doctrine that once a valid sentence has been pronounced, the court imposing the same is lacking in jurisdiction to vacate or modify the sentence, *except as otherwise provided by statute* ..." (Emphasis added.)

[1] Section 46-18-203, MCA, is a specific procedural statute granting judges, magistrates, or justices of the peace authority to revoke a suspended sentence or impose sen-

tence following a deferred imposition of sentence. Section 46-18-203, MCA, provides:

"Revocation of suspended or deferred sentence. A judge, magistrate, or justice of the peace who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under 46-18-201 or his successor is authorized, *during the period of the suspended sentence or deferred imposition of sentence, in his discretion, to revoke the suspension or impose sentence and order the person committed.* He may also, in his discretion, order the prisoner placed under the jurisdiction of the board of pardons as provided by law or retain such jurisdiction with his court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing." (Emphasis added.)

This authority must be exercised in accordance with the precise provisions of this section; action by a judge, magistrate, or justice of the peace outside the provisions of

Section 46-18-203, MCA, is without jurisdiction. *State v. Porter*, supra.

The controlling language in Section 46-18-203, MCA, is "... during the period of such suspended sentence or deferred imposition of sentence..." Determining the meaning of this phrase disposes of this petition.

[2, 3] It is well settled that if a "... statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the court to construe." *Shannon v. Keller* (1980), Mont., 612 P.2d 1293, 1294, 37 St.Rep. 1079, 1081. Such is the case before this Court. The words "during the period" are extremely plain and unambiguous. The clear import is that a court is vested with jurisdiction to revoke a suspended or deferred sentence *only* during the running of the suspended or deferred sentence. Once such time has expired a court is without jurisdiction to decide petitions for revocation filed by the State.

The State requests this Court to construe Section 46-18-203, MCA, to mean that a timely filed petition for revocation vests jurisdiction in the Court, regardless whether the hearing on such petition is held after the suspended or deferred sentence has ex-

pired. The State relies on decisions from Nevada and Oklahoma in support of this contention. See *Sherman v. Warden, Nevada State Prison* (1978), Nev., 581 P.2d 1278; *Degraffenreid v. State* (1979), Okl.Cr., 599 P.2d 1107.

These authorities are not in point. Nevada and Oklahoma have statutory provisions which vest jurisdiction in the courts for purposes of revocation of suspended or deferred sentences upon the filing of a petition for revocation. Therefore a timely filed petition of revocation in these states vests jurisdiction in courts when the time of the suspended or deferred sentence has run.

Montana's statute pertaining to revocations of suspended or deferred sentences, Section 46-18-203, MCA, contains no language stating that a timely filed petition for revocation invokes a court's jurisdiction over these matters. It is axiomatic that this Court cannot insert what the legislature has not statutorily included. Section 1-2-101, MCA.

In conclusion, we hold that Section 46-18-203, MCA, grants jurisdiction to judges, magistrates, or justices of the peace to revoke suspended sentences or impose sentences following deferred sentences *only* during the period of the suspended or deferred sentences. This jurisdiction extends only through the running of the suspended or deferred sentence, regardless of whether a petition for revocation has been filed prior to the termination of the suspended or deferred sentence.

Therefore, petitioner's request for a Writ of Habeas Corpus is granted. It is hereby ordered that such writ issue immediately and that petitioner be discharged from the custody of the Swan River Youth Forest Camp.

HASWELL, C. J., and DALY, HARRISON and SHEA, JJ., concur.

MINUTES OF THE JUDICIARY COMMITTEE  
March 10, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown in room 224A of the capitol building, Helena, Montana at 8:02 a.m. All members were present except Representative Seifert. Brenda Desmond, Staff Attorney for the Legislative Council, was also present.

SENATE BILL 4

SENATOR MAZUREK, District 16, Helena, Montana, stated that this bill was a product of the interim Judiciary Subcommittee, which was trying to do something about appellate delays, and there was a great deal of discussion about transcripts. He indicated that one of the things they heard was that they would not order transcripts promptly; this bill would require the appellant in a criminal appeal to order a transcript in writing and a notice of this order be sent to the clerk of the supreme court. He noted that the subcommittee had placed in a penalty if the transcript had not been ordered within ten days after filing the notice of appeal, then the attorney representing the defendant would be assessed the cost of transcript preparation; the Senate took this out as the Senator from Deer Lodge thought this would make this a "Mickey Mouse" bill.

There were no proponents and no opponents.

SENATOR MAZUREK closed.

There were no questions and the hearing on this bill closed.

SENATE BILLS 26 AND 52

SENATOR MAZUREK, District 16, Helena, noted that these bills could be considered together and, knowing that the committee had heard this previously, he pointed out the changes that were made in the Senate. Senate Bill 52 is an act to provide for a third district court judge in the First Judicial District, and Senate Bill 26 alters certain judicial boundaries and changes the number of judges in certain judicial districts. He said that Ms. Desmond has provided maps showing these changes. See EXHIBITS A, B, and C. He explained that in the First Judicial District and in the Seventh

Judiciary Committee  
March 10, 1983  
Page Four

There were no further proponents.

NICK MURNION, the County Attorney of Garfield County, stated that he was not going to speak against the bill but only a portion of it. See EXHIBIT E.

There were no further opponents.

SENATOR MAZUREK noted that the situation in Garfield County sounded like a legitimate one and he said that he had received a letter from Judge Martin, in which he did allude to this problem. He indicated that they tried to make their decisions in regard to trade areas, etc. and he would have no problem with taking Garfield County out of the Seventh Judicial District and putting it back in the Sixteenth Judicial District.

REPRESENTATIVE KEYSER questioned MR. MURNION asking if he understood him to say that he had only two or four district court cases. MR. MURNION responded that in 1982, they had two criminal actions - two felonies.

There were no further questions and the hearing on this bill was closed.

#### SENATE BILL 409

SENATOR BERG, District 21 in Great Falls, said that this was introduced at the request of the Department of Justice and is a bill that clarifies the law regarding the revocation of a deferred or suspended sentence, requiring that a petition to revoke a deferred or suspended sentence be filed during the period of deferral or suspension.

MARGARET JOHNSON, Assistant Attorney General, said that the immediate cause of this bill was a case that was decided by the Supreme Court in 1981. See EXHIBIT E.

There were no further proponents and no opponents.

SENATOR BERG closed.

There were no questions and the hearing on this bill closed.

## VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL      SENATE BILL 409

DATE March 10, 1983

SPONSOR SENATOR CRIPPEN

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

TESTIMONY OF MARGARET M. JOYCE JOHNSON

ASSISTANT ATTORNEY GENERAL

REGARDING SENATE BILL 409

Section 46-18-203 of the Montana Code Annotated in its present form permits a judge to revoke a suspended or deferred sentence "during the period of the suspended sentence or deferred imposition of sentence." That phrase was interpreted by the Montana Supreme Court in the 1981 case of FELIX v. MOHLER, 636 P.2d 830 (copy attached). The Court held that the filing of a petition to revoke the sentence during the period of the suspension or deferral was insufficient to vest the sentencing court with jurisdiction to revoke if the court was unable to act and hold a hearing before the sentence had run.

Although that interpretation of the statute certainly accords with the literal wording of the statute, brief analysis shows that it could not reflect the true intent of the legislature in enacting that provision. Such an interpretation effectively gives probationers serving a suspended sentence or for whom imposition of sentence was deferred, a carte blanche to violate the conditions of their probation at any time during the final days of their probation because the court will be unable to hold a hearing on the petition

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even if a petition to revoke is filed during the period of suspension or deferral.

To rectify that situation, the Department of Justice has requested that Senate Bill 409 be introduced to amend Section 46-18-203 and remove from the statute the phrase "during the period of the suspended sentence or deferred imposition of sentence" which the Court interpreted in FELIX v MOHLER. The bill also adds a new subsection (2) to the statute specifically permitting a sentencing court to act upon a petition to revoke either a suspended sentence or a deferred imposition of sentence even after the period of suspension or deferral has run as long as the petition is filed within the period of suspension or deferral.

The act is entitled, "AN ACT TO CLARIFY THE LAW REGARDING THE REVOCATION OF A DEFERRED OR SUSPENDED SENTENCE . . . etc.," to reflect that this bill is intended to clarify what has always been the only reasonable intent of the legislature regarding revocation of a deferred or suspended sentence, i.e., (1) that anytime a probationer violates the conditions of his probation during the period of deferral or suspension, he is subject to having that sentence revoked, whether or not the court in question is able to hold a hearing on the petition to revoke during the



period of suspension or probation and (2) that a probationer cannot with impunity violate the conditions of his probation in its final days simply because the sentencing court's calendar and the requirements of due process do not permit the holding of a hearing on the petition during the remaining days of the period of suspension or deferral. Failure to comply with the conditions of probation and prompt action by the State in petitioning the sentencing court to revoke the suspension or deferred imposition of sentence should suffice to permit the sentencing court to act on the merits of that petition and revoke the sentence if the claimed violations of probation are found to have occurred.

Aaron FELIX, Petitioner,

v.

Mel MOHLER, Director, Swan River  
Youth Forest Camp, for the State  
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No. 81-340.

Supreme Court of Montana.

Submitted on Briefs Oct. 22, 1981.

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Habeas corpus proceeding was brought to secure release of petitioner from restraint under district court order revoking a three-year deferred sentence and imposing a three and one-half-year sentence. The Supreme Court, Morrison, J., held that statute governing revocation of suspended or deferred sentence grants jurisdiction to courts to revoke suspended or deferred sentences only during the period of such sentences.

Writ granted.

1. Criminal Law  $\S$  982.9(2)

Action by judge, magistrate, or justice of the peace to revoke suspended or deferred sentence outside the provisions of statute governing revocation of suspended or deferred sentence is without jurisdiction. MCA 46-18-203.

2. Statutes  $\S$  190

If statute is plain, unambiguous, direct and certain, statute speaks for itself and there is nothing left for court to construe.

3. Criminal Law  $\S$  982.9(2)

Statute governing revocation of suspended or deferred sentence grants jurisdiction to judges, magistrates, or justices of the peace to revoke suspended sentences or impose sentences following deferred sentences only during period of suspended or deferred sentences, regardless of whether petition for revocation has been filed prior to termination of such sentence. MCA 46-18-203.

Patterson, Marsillo, Tornabene & Schuyler, Missoula, for petitioner.

Mike Greely, Atty. Gen., Helena, Edward P. McLean, Deputy County Atty., Missoula, for respondent.

MORRISON, Justice.

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On August 20, 1979, this deferred sentence was continued and petitioner was ordered to complete restitution by November 5, 1980. Petitioner failed to comply with this order by November 5, 1980, and a petition to revoke petitioner's deferred sentence was filed on January 16, 1981. A hearing on this petition was held May 27, 1981, three years and five days after the initial deferral.

At this hearing, petitioner moved to dismiss the proceeding on the grounds that the District Court was without jurisdiction. The District Court overruled petitioner's objection concluding that the Court retains "... jurisdiction (when) the petition is filed within the (deferral) time."

The District Court sentenced petitioner to three and one-half years in the Montana State Prison. Petitioner has been incarcerated since, either at the Montana State Prison or the Swan River Youth Forest Camp.

Petitioner raises the following issue:

1) Whether a District Court retains jurisdiction to revoke a deferred imposition of sentence beyond the time period of deferral if a petition to revoke is timely filed?

In *State v. Porter* (1964), 143 Mont. 528, 540, 541, 391 P.2d 704, 711, this Court stated that:

"[t]his state is committed to the doctrine that once a valid sentence has been pronounced, the court imposing the same is lacking in jurisdiction to vacate or modify the sentence, except as otherwise provided by statute ..." (Emphasis added.)

[1] Section 46-18-203, MCA, is a specific procedural statute granting judges, magistrates, or justices of the peace authority to revoke a suspended sentence or impose sen-

tence following a deferred imposition of sentence. Section 46-18-203, MCA, provides:

"Revocation of suspended or deferred sentence. A judge, magistrate, or justice of the peace who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under 46-18-201 or his successor is authorized, during the period of the suspended sentence or deferred imposition of sentence, in his discretion, to revoke the suspension or impose sentence and order the person committed. He may also, in his discretion, order the prisoner placed under the jurisdiction of the board of pardons as provided by law or retain such jurisdiction with his court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing." (Emphasis added.)

This authority must be exercised in accordance with the precise provisions of this section; action by a judge, magistrate, or justice of the peace outside the provisions of

Section 46-18-203, MCA, is without jurisdiction. *State v. Porter*, supra.

The controlling language in Section 46-18-203, MCA, is "... during the period of such suspended sentence or deferred imposition of sentence..." Determining the meaning of this phrase disposes of this petition.

[2,3] It is well settled that if a "... statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the court to construe." *Shannon v. Keller* (1980), Mont., 612 P.2d 1293, 1294, 37 St.Rep. 1079, 1081. Such is the case before this Court. The words "during the period" are extremely plain and unambiguous. The clear import is that a court is vested with jurisdiction to revoke a suspended or deferred sentence only during the running of the suspended or deferred sentence. Once such time has expired a court is without jurisdiction to decide petitions for revocation filed by the State.

The State requests this Court to construe Section 46-18-203, MCA, to mean that a timely filed petition for revocation vests jurisdiction in the Court, regardless whether the hearing on such petition is held after the suspended or deferred sentence has ex-

pired. The State relies on decisions from Nevada and Oklahoma in support of this contention. See *Sherman v. Warden, Nevada State Prison* (1978), Nev., 581 P.2d 1278; *Degraffenreid v. State* (1979), Okl.Cr., 599 P.2d 1107.

These authorities are not in point. Nevada and Oklahoma have statutory provisions which vest jurisdiction in the courts for purposes of revocation of suspended or deferred sentences upon the filing of a petition for revocation. Therefore a timely filed petition of revocation in these states vests jurisdiction in courts when the time of the suspended or deferred sentence has run.

Montana's statute pertaining to revocations of suspended or deferred sentences, Section 46-18-203, MCA, contains no language stating that a timely filed petition for revocation invokes a court's jurisdiction over these matters. It is axiomatic that this Court cannot insert what the legislature has not statutorily included. Section 1-2-101, MCA.

In conclusion, we hold that Section 46-18-203, MCA, grants jurisdiction to judges, magistrates, or justices of the peace to revoke suspended sentences or impose sentences following deferred sentences only during the period of the suspended or deferred sentences. This jurisdiction extends only through the running of the suspended or deferred sentence, regardless of whether a petition for revocation has been filed prior to the termination of the suspended or deferred sentence.

Therefore, petitioner's request for a Writ of Habeas Corpus is granted. It is hereby ordered that such writ issue immediately and that petitioner be discharged from the custody of the Swan River Youth Forest Camp.

HASWELL, C. J., and DALY, HARRISON and SHEA, JJ., concur.

SENATE BILL NO. 409

INTRODUCED BY BERG, HALLIGAN, TURNAGE,

CRIPPEN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT ~~CLARIFYING THE LAW~~  
~~REGARDING THE REVOCATION OF A DEFERRED OR SUSPENDED~~  
SENTENCE; REQUIRING THAT A PETITION TO REVOKE A DEFERRED OR  
SUSPENDED SENTENCE BE FILED DURING THE PERIOD OF DEFERRAL OR  
SUSPENSION; CONTINUING JURISDICTION TO REVOKE IF THE PERIOD  
OF DEFERRAL OR SUSPENSION EXPIRES AFTER THE PETITION IS  
FILED; AMENDING SECTION 46-18-203, MCA; AND PROVIDING AN  
IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred  
sentence. ~~(1)~~ A judge, magistrate, or justice of the peace  
who has suspended the execution of a sentence or deferred  
the imposition of a sentence of imprisonment under 46-18-201  
or his successor is ~~authorized during the period of the~~  
~~suspended sentence or deferred imposition of sentence~~ in  
his discretion to revoke the suspension or impose sentence  
and order the person committed. He may also, in his  
discretion, order the prisoner placed under the jurisdiction

of the department of institutions as provided by law or  
retain such jurisdiction with his court.

~~(2) A petition seeking revocation of a suspended~~  
~~sentence or imposition of a sentence previously deferred~~  
~~must be filed with the sentencing court during the period of~~  
~~suspension or deferral. Expiration of the period of~~  
~~suspension or deferral after the petition is filed does not~~  
~~deprive the court of jurisdiction to rule on the petition.~~

~~(3)~~ Prior to the revocation of an order suspending or  
deferring the imposition of sentence, the person affected  
shall be given a hearing."

~~NEW SECTION.~~ Section 2. Applicability date. Section 1  
applies to any petition filed after the effective date of  
this act.

~~NEW SECTION.~~ Section 3. Effective date. This act is  
effective on passage and approval.

-End-